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10/706,197	11/12/2003	Philip L. Camillocci	132387IT/YOD GEMS:0230	5978
68174	7590	08/17/2007	EXAMINER	
GE HEALTHCARE c/o FLETCHER YODER, PC P.O. BOX 692289 HOUSTON, TX 77269-2289			KASZTEJNA, MATTHEW JOHN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/706,197
Filing Date: November 12, 2003
Appellant(s): CAMILLOCCI ET AL.

Patrick S. Yoder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 25, 2007 appealing from the Office action mailed December 12, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,380,998	Kieffer, III et al.	4-1983
5,514,074	Yabe et al.	5-1996

5,458,133	Yabe et al.	10-1995
2002/0013510	Moriyama	1-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,380,998 to Kieffer, III et al. in view of U.S. Patent No. 5,514,074 to Yabe et al.

In regards to claims 1 and 7, Kieffer, III et al. disclose a cover having a body 41 having a recessed portion configured to releasably secure to an insertion portion of the endoscope wherein the body is configured to be disposed on the tip of the endoscope when the endoscope is not in use but are silent with respect to a disinfecting compound integral to the body. Yabe et al. teach of an analogous apparatus having an antibacterial agent ~~is~~ coated on the endoscope cover 2A (see Col. 4, Lines 35-40 and Col. 12, Lines 1-6). It would have been obvious to one skilled in the art at the time the invention was made to coat the cover of Kieffer, III et al. with an antibacterial agent to help prevent the growth of unwanted bacteria as taught by Yabe et al.

In regards to claim 2, Kieffer, III et al. disclose a cover, wherein the recessed portion presents a tapered profile with respect to a longitudinal axis thereof.

In regards to claim 3, Kieffer, III et al. disclose a cover, wherein the body comprises an open cell foam as it is disclosed a relatively soft material or the like is used (see Col. 3, Lines 20-45).

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In regards to claim 4, Kieffer, III et al. disclose a cover, wherein the body further comprises a channel coupled to the recessed portion such that the channel and recessed portion extend through the body (see Fig. 2).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,380,998 to Kieffer, III et al. in view of U.S. Patent No. 5,514,074 to Yabe et al. in view of U.S. Patent No. 5,458,133 to Yabe et al.

In regards to claim 5, Kieffer, III et al. and Yabe et al. '074 disclose a cover having a body 41 having a recessed portion configured to releasably secure to an insertion portion of the endoscope and a disinfecting compound disposed thereon but are silent with respect to the body including an indicium configured to indicate a contamination condition. Yates et al. '133 teach of an analogous cover for an endoscope wherein an indication device for indicating whether or not an apparatus should handle a clean area in a sterile state or other area is provided on each of the components (see Col. 4, Lines 36-67). Furthermore, Yates et al. '133 teach of using the indicia to help an operator recognize whether he is working with a sterile apparatus or a contaminated apparatus. The indication means for indicating whether an area is a clean or a general area of the cover type endoscope apparatus is not limited to being a blue or yellow tape. Rather, in the indication means, colors to be displayed and display areas may be appropriately combined. Also, the indication means is not limited to being a color display, but symbols or characters may be used, or a combination of symbols and characters may be used. It would have been obvious to one skilled in the art at the time the invention was made to apply an indicium to the appropriate covers of Kieffer, III

et al. and Yabe et al. '074 in order to allow easy recognition of the contamination status of the apparatus as taught by Yabe et al. '133. The apparatus of Kieffer, III et al. and Yabe et al. is considered to be inherently capable of performing the recited method claims.

Claims 8-13, 15-29, 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,380,998 to Kieffer, III et al. in view of U.S. Patent No. 5,458,133 to Yabe et al.

In regards to claims 8-13, 15-18, 22-29, 31-36, Kieffer, III et al. disclose a cover having a body 41 having a recessed portion configured to releasably secure to an insertion portion of the endoscope and wherein the body is configured to be disposed on the tip of the endoscope when the endoscope is not in use but are silent with respect to the body including an indicium configured to indicate a contamination condition. Yates et al. teach of an analogous cover for an endoscope wherein an indication device for indicating whether or not an apparatus should handle a clean area in a sterile state or other area is provided on each of the components (see Col. 4, Lines 36-67). Furthermore, Yates et al. teach of using the indicia to help an operator recognize whether he is working with a sterile apparatus or a contaminated apparatus. The indication means for indicating whether an area is a clean or a general area of the cover type endoscope apparatus is not limited to being a blue or yellow tape. Rather, in the indication means, colors to be displayed and display areas may be appropriately combined. Also, the indication means is not limited to being a color display, but symbols or characters may be used, or a combination of symbols and characters may

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be used. It would have been obvious to one skilled in the art at the time the invention was made to apply an indicium to the appropriate covers of Kieffer, III et al. in order to allow easy recognition of the contamination status of the apparatus as taught by Yabe et al. The apparatus of Kieffer, III et al. and Yabe et al. is considered to be inherently capable of performing the recited method claims.

In regards to claims 19-21 and 37-40, Kieffer, III et al. disclose a cover wherein the first and second cover members comprise an impact absorbing material and may comprise an open cell foam or plastic material (see Col. 3, Lines 20-68).

Claims 14 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,380,998 to Kieffer, III et al. in view of U.S. Patent No. 5,458,133 to Yabe et al. in further view of U.S. Patent Application Publication No. 2002/0013510 to Moriyama.

In regards to claims 14 and 30, Kieffer, III et al. and Yabe et al. disclose a cover having a body 41 having a recessed portion configured to releasably secure to an insertion portion of the endoscope but are silent with respect to the body including an indicium having a raised surface with respect to the body. Moriyama teach of an analogous apparatus wherein an identification part is used to determine if an instrument is suitable for sterilization. Furthermore, Moriyama teach the indicium capable of being identified by seeing or touching from any direction. It would have been obvious to one skilled ⁱⁿ the art at the time the invention was made to include a raised surface as the indicium in the apparatus of Kieffer, III et al. and Yabe et al. to provide the operator tactile feedback as taught by Moriyama.

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(10) Response to Argument

In response to applicant's argument that Kieffer fails to disclose a cover disposed on an endoscope only when the otoscope is not in use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Kieffer discloses an otoscope 10 equipped with a removable hollow speculum 40 (see Col. 3, Lines 20-45). Thus, the otoscope is functional with the speculum removed from the distal tip of the otoscope as viewing takes place through lens 31 and viewing channel 26 (see Col. 2, Lines 62-64). The speculum offers protection to the distal end of the endoscope, both during use and when not in use (i.e. transporting the instrument). Furthermore, Yabe et al. teach of an analogous apparatus wherein an antibacterial agent is coated on the endoscope insert part and that the antibacterial agent may be infused into a material of the outer surface (see Col. 4, Lines 35-40 and Col. 12, Lines 1-6). The combination of Kieffer and Yabe et al. teach of a removable speculum having an antibacterial agent infused throughout. Thus the speculum would serve to protect the distal end of the otoscope during transportation from mechanical damage, and also to prevent the tip thereof from outside contaminants due to the antibacterial agent infused in the body of the speculum. The speculum may then be removed and the otoscope used independently to visually observe the functional activity of the ear. As broadly as claimed, Kieffer and Yabe et al. meet the limitations of the recited claims.

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In response to applicant's argument that Kieffer is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kieffer teaches of a cover 41 used with an otoscope 20, which is identical to the applicant's endeavor, being in a field of medicine related to internal anatomical cavities, some of which may include internal organs and tissues. An otoscope is, by definition, an endoscope. The definition of an endoscope is "an instrument for visualizing the interior of a hollow organ (as the rectum or urethra)" (see Webster's Ninth New Collegiate Dictionary, Page 411 as referenced by Applicant Arguments/Remarks, pg. 12 received 9/25/06). The rectum or urethra are merely examples of hollow organs and are not limiting as to what an endoscope may be used to examine. An otoscope is an instrument for examining the *interior* of the ear (i.e. the ear canal), especially the eardrum, consisting essentially of a magnifying lens and a light. Thus, an otoscope is in fact an endoscope by definition and is analogous art.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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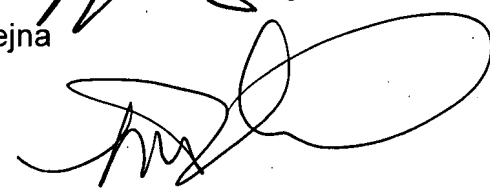
For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,


Matthew Kasztejna
A.U. 3739

8/13/7

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